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IN THE

Supreme Court of the United States

BANK BUILDING AND EQUIPMENT CORPORATION OF AMERICA, a Corporation,

Petitioner.

vs.

WALTER J. REES,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

BRIEF FOR RESPONDENT IN OPPOSITION

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The Scheffer Press, Inc.—ANdover 3-6850

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SUPREME COURT OF THE UNITED STATES

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BRIEF FOR RESPONDENT IN OPPOSITION

Position of respondent.

It is the position of respondent that the subject petition should be denied for the following reasons:

1. The instant case involves a narrow question of state law relating to an employment contract and its bad faith termination. A substantial federal question is not presented.

2. The Court of Appeals for the Seventh Circuit decided the case in accordance with applicable Missouri law.

ARGUMENT

I.

ONLY LIMITED QUESTIONS OF STATE LAW ARE INVOLVED IN THIS CASE. NO FEDERAL QUESTION IS PRESENTED.

The instant case involves questions of state law relating to an employment contract and its bad faith termination to deprive respondent of commissions which were reasonably certain to accrue. No substantial or important federal question is raised. In fact, no federal question of any nature is presented.

Thus, respondent at the trial claimed that petitioner discharged him from its employ "in bad faith and without good cause in an attempt to deprive the plaintiff of the commissions which it was reasonably certain would otherwise have accrued to him as the result of his prior efforts had he been permitted to remain an employee of the defendant." (Court's instruction to jury, A. 396, R. 478). The jury's verdict constitutes a binding determination of those facts.

Whether respondent is entitled to recover under the above circumstances is exclusively a question of Missouri law—the state where the employment contract was executed.

Under such circumstances, this Court has consistently refused to issue its writ of certiorari. *Ruhlin* v. *N.Y. Life Ins. Co.*, 304 U.S. 202, 206-7 (1937).

II.

THE INSTANT CASE WAS DECIDED IN ACCORDANCE WITH APPLICABLE DECISIONS OF THE MISSOURI SUPREME COURT AND THE COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

In its attempt to pose a question which merits this Court's attention, petitioner argues that the decision of the Court of Appeals for the Seventh Circuit "stands in patent conflict with *Spencer* v. *General Electric Co.*, 243 F. 2d 934," a decision of the Court of Appeals for the Eighth Circuit (petition 13-18).

The *Spencer* case, however, is substantial authority for the decision in this case. In *Spencer*, defendant's contract gave it the specific right to discharge plaintiff at any time "without cause" and to reduce commissions in any manner defendant deemed equitable. Even with these contractual provisions, none of which are present in the instant case, the court recognized that defendant could still be liable to plaintiff if plaintiff's services were "terminated arbitrarily or for the purpose of avoiding any obligation or liability under the terms of his contract." (243 F. 2d at 939). The court held that under the facts of the case, where even plaintiff had admitted that the claimed benefits would have been a "windfall" to him, the trial judge's finding for defendant constituted a question of fact which was supported by the evidence.

In the instant case, the law of the *Spencer* case was presented to the jury in the following instruction by the trial judge (A. 396, R. 478):

> "The plaintiff alleges and has the burden of proving by the preponderance of the evidence that the defendant wrongfully terminated the employment contract in bad faith and without good cause in an attempt to de-

prive the plaintiff of the commissions which it was reasonably certain would otherwise have accrued to him as the result of his prior efforts had he been permitted to remain an employee of the defendant."

Accordingly, petitioner's claim that the instant opinion conflicts with the *Spencer* decision is clearly without merit.

Petitioner's further assertion that the opinion in this case conflicts with applicable Missouri law (Petition 18-22) also is not valid.

The only applicable decision petitioner cites is *Croskey* v. *Kroger Co.*, 259 S.W. 2d 408 (Mo. App. 1953). Again, this decision supports respondent's petition for there the court recognized that defendant would be liable to plaintiff if "[plaintiff] was discharged arbitrarily and without sufficient cause" (259 S.W. 2d at 414). The court, however, held that there was simply no evidence to support plaintiff's contentions since he had unquestionably performed unsatisfactorily over so long a period of time, that his discharge in fact was for good cause.

In contrast to the *Croskey* case, the trial judge and the Court of Appeals in the instant case ruled that there was "substantial support in the record for the conclusions on these factual issues which are implicit in the jury's verdict." (Petition vi-vii).

Other Missouri decisions cited by petitioner (Petition 19) are not in point since none involved a "bad faith" termination.

There is accordingly no conflict between circuits or with Missouri decisions.

CONCLUSION

The instant case involved questions of fact for resolution by a jury pursuant to instructions restating applicable Missouri law. Both the trial judge and the Court of Appeals in this case ruled that there was adequate evidence to support the jury's verdict in favor of respondent. (Petition vi-vii)

No federal question is presented for this Court's review. No conflict exists between the decision in this case and any decision of another circuit or of the Missouri Supreme Court.

Accordingly, respondent submits that the subject petition for writ of certiorari should be denied.

Respectfully submitted,

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